8.1. Concluding Remarks

The main purpose of the research has been to assess the legality of foreign armed intervention in internal conflicts under international law, given the proliferation of internationalized internal conflicts; the inability of the Security Council to cope with them, and the validity of the U.N. Charter system for the control coercion. To this end, it is useful to summarize the main conclusions reached at the end of each Chapter.

The first Chapter briefly delineated the contours of the study, hypothesis and the problems existing in the research work. It also clarifies the objectives and the significance of the research work.

The second Chapter has attempted to discuss the historical evolution of the legal norms governing use of force under international law as it evolved over the ebb and flow of inter-state relations through the centuries. It has shown that, the regulation of the use of armed force in interstate relations has been one of the primary concerns of the world community from the very early days of civilization. No wonder then that the cultural heritage of mankind is replete with instances of efforts by various influential sections to ensure the regulation of recourse to use or threat of force. In the medieval age, the moral philosophers and religious teachers underscored the significance of just war as a bulwark against the aggressive militarism of the day.

The 1648 Peace of Westphalia marked the end of the Thirty Years War.\(^1\) The supremacy of the sovereign authority was established within a system of independent and equal states as a measure to avoid another war after nearly three decades of war, and thus establish peace and order in Europe.

The legal regulation of recourse to force had assumed particular significant in the 20\(^{th}\) century, especially after the establishment of the League of Nations. The First World War marked the end of the balance of power system and raised a new the question of unjust war. It also resulted in efforts to rebuild international affairs upon the basis of a general international institution which would oversee the conduct of the world community to ensure that aggression could not happen again. The creation of the League of Nations reflected a completely different attitude to the problems of force in the international order.\(^2\)

The League system did not, it should be noted, prohibit war or the use of force, but it did set up a procedure designed to restrict it to tolerable levels. It was a constant challenge of the inter-war years to close the gaps in the Covenant in an effort to achieve the total prohibition of war in international law and this resulted ultimately in the signing in 1928 of the General Treaty for the Renunciation of War (the Kellogg-Briand pact).\footnote{Ian. Brownlie, \textit{International Law and the Use of Force by States}, (Oxford University Press, 1963), p. 74.}

The parties to this treaty condemned recourse to war and agreed to renounce it as an instrument of national policy in their relations with one another. However, this does not mean that the use of force in all circumstances is illegal. Reservations to the treaty by some states made it apparent that the right to resort to force in self-defence was still a recognized principle in international law.\footnote{Yoram. Dinstein, \textit{War, Aggression and Self-Defence}, (Cambridge University Press, 1988), p.88.} Whether in fact measures short of war such as reprisals were also prohibited or were left untouched by the treaty’s ban on war was unclear and subject to conflicting interpretations.\footnote{D. W. Bowett, \textit{Self-Defence in International Law}, (Manchester University Press, 1958), p.136.}

Historically, the just war tradition has focused on working through the moral problems of wars between states and not on wars within states. Concern for international peace and subsequent respect for state sovereignty have led theorists to conceptualize war as an inter-state affair, leaving questions of intra-state conflict aside. However, in the 21\textsuperscript{st} century domestic political violence has become a major concern, and internal conflict is receiving greater attention from international organizations like the (World Bank) and the U.N.O. It is becoming widely recognized that wars between opposing political factions within states have increased, and while these conflicts vary in nature, a large number of internal conflicts are being fought between citizens demanding democracy, greater representation, more control over their government, better distribution of wealth, etc., and their governments, who are resisting these demands. At this time there exists virtually no theory for evaluating the justness of such internal conflicts, and as the current political situation shows, the need for theory is great.

As Chapter three investigated the jurisprudence of the U.N. Charter on the use of force, it revealed that, the international organization designed to restore and maintain global peace and security and thereby to save succeeding generation from
the scourge of war. The normative principles that underlie the U.N. Charter brought with it, the enormous prestige and legitimacy of the organization. It is true that by time the U.N. was established, the normative principles underlying the proscription on recourse to force in general were landscape of international legality.

The U.N. further strengthened and refined the structural configurations of the international legal order within which these principles were to be actualized in real situations of varying complexity. The post Second World War, international legal order underscored the significance of the state-centric approach with its principles such as non intervention, sovereign equality, territorial integrity and political independence firmly ingrained in the Charter. It should be noted that the political viability, legal sustainability and practical reliability of the (Westphalian) order cast its profound spell over the U.N. system as well.

The legal principles underpinning the U.N. system such as the general proscription of the use of force in inter-state relations, peaceful settlement of disputes, authorization of use of force only for the promotion of peace and security within the community of states etc., in effect, attempted to create a legal order where war is seen as a repugnant ideal and peace, the sublime value. Perhaps, the most significant contribution of the U.N. towards the promotion of peace and maintenance of international security is reflected in Article 2(4) of the Charter.

Recognizing however, the hard political realities of the world, the farsighted drafter of the U.N. Charter did provide for exceptions to the otherwise sweepingly comprehensive proscription of the use of force in inter-state relations. Of the two stated exceptions in the Charter, the first lie in Article 51, which preserve the “inherent right of individual or collective self-defence if an armed attack occurs”.  

The second exception seeks its legitimacy from Chapter VII of the Charter describing the collective security mechanism. Under the U.N. system, the Security Council, if it determines that a threat to the peace, breach of the peace or act of aggression has occurred, may take inter alia, military enforcement action involving the armed forces of the member states.

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6 U.N. Charter preamble. The first sentence of the Preamble begins, “We the peoples of the United Nations determined to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind ...), and continues with a pledge (to practice tolerance and live together in peace with one another as good neighbors, and to unite our strength to maintain international peace and security ....).

7 U.N. Charter, Article 51.

8 Ibid. Article 42.
However, the modern day threat to international peace comes in the form of internal disputes rather than the cross border conflicts envisioned by the framers. The Charter drafters were extremely concerned with any use of force. Their concern arose out of the violence and devastation of World War II, making their desire for world peace greater than their desire for justice. The Charter has a general prohibition of intervention in domestic disputes because of the fact that internal conflict was relatively rare when the U.N. was formed. Additionally, neither the Charter nor customary international law prohibits internal conflict.

While the Organization has generally regarded internal power struggles as domestic matters, it has intervened when these conflicts have had international effects. Even when the U.N. has intervened, however, it has had different goals and utilized different methods than unilateral intervenors. It has tried not to violate principles such as self-determination, political independence, and territorial sovereignty.

Jurisdiction in internal conflicts also raises important questions peculiar to the U.N. Charter, which directly addresses the question of domestic jurisdiction. The Organization’s duty to refrain from intervening in matters within the domestic jurisdiction of its members is set out in Article 2(7).

With the collapse of the Cold-War world order, which was characterized by superpower rivalry and a balance of power, there is a great deal of uncertainty, and a larger degree of instability.

The post Cold-War era is characterized by the reemergence of buried nationalism and claims to secede, rising political demands within countries and revolts against long-time dictators, protracted internal conflicts (some left-over from the Cold-War), and instability in numerous nascent democracies. These conditions may increase the likelihood of a particular internal conflict having a regional or international impact.

Consequently, based on the previous factors that internationalized internal conflicts, current sensibility and the contemporary international environment would

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10 Ibid. at 34.
indicate a role for the U.N. in a greater number of internal conflicts. This is borne out in practice as the Organization undertakes to resolve and assist in many contemporary internal conflicts.\textsuperscript{14}

Following the end of the Cold-War, the U.N. developed new roles concerning its peacekeeping efforts. As discussed in Chapter three, peacekeeping operations falling conceptually between Chapter VI and Chapter VII of the U.N. Charter.

Traditional peace-keeping adhered to certain parameters and expectations including impartiality, voluntary participation and consent of the receiving state. Post Cold-War peace-keeping, largely deployed to contain intra-state conflict, faced different type of situation requiring different approaches. During the Cold-War major powers protected their interests and kept hostilities out of the U.N. The end of the Cold-War meant major powers no longer felt the need to protect these special interests and the U.N. was called upon to act.

The U.N. is currently in high demand. However, the complicated conflicts and wars it tries to settle have put the U.N. under great pressure. Many of these wars take place in countries with no functioning state, so called failed states. It means that consent and respecting the sovereignty of a state, often crucial before intervention during the Cold-War, is abandoned. In effect, peacekeeping has lately moved towards peace enforcement.

Although the latter is inscribed in the Charter, it is costly both in terms of money and lives. However, while the numbers of U.N.’s missions have exploded in recent years, many countries are unwilling to pay the bill or to send troops to a zone of conflict.

The discussion in Chapter four analyzed the international legal documents regulated internal armed conflicts under international law and the role of ICRC. It has shown that, although common Article 3 of the Geneva Conventions represents an advancement in the laws governing an internal conflict, experience has quickly demonstrated its inadequacy. Initially, there was a problem determining when the Article was applicable.\textsuperscript{15} The Article does not define the necessary level of hostilities

This is not to discount the impact of recent and profound political changes that include the end of the Cold-War and a Security Council that is working together. Still, most of these conflicts have been brought to the Organization by affected or surrounding States. This indicates that domestic jurisdiction limitations are receding as long as there is consent.

\textsuperscript{15} Charles Lysaght, ‘The Scope of Protocol II and its Relation to Common Article 3 of the Geneva Conventions of 1949 and other Human Rights Instruments’, 33 \textit{AM. U.L. REV.}, (1983), p.9 at 13. The inadequacies became apparent when States refused or were reluctant to recognize an Article 3 situation. For example, the French government did not recognize Article 3 until the late stages of
required to invoke its protections, other than a vague standard of “armed conflict not of an international character”. This allows governments to exhibit broad discretion in determining whether or not the Article applies to the parties involved.\textsuperscript{16}

It has been suggested that the concept of an armed conflict encompasses “the idea of open, armed confrontation between relatively organized armed forces or armed groups. Internal disturbances characterized by sporadic acts of violence and internal tensions characterized by widespread arrests are not considered armed conflicts”.\textsuperscript{17} Nevertheless, it is the government that has the final word. This suggests an additional problem with common Article 3, lack of an enforcement mechanism.

The nearest the Article comes to addressing the enforcement issue is the provision that allows an impartial humanitarian body, such as the ICRC, to offer its services to the parties of the conflict.\textsuperscript{18} Thus, an examination of common Article 3 reveals a general and incomplete provision that cannot be considered a sufficient guide for parties involved in an internal conflict.\textsuperscript{19}

In 1964 the ICRC recognized problems and began drafting possible improvements to common Article 3.\textsuperscript{20} The result was a draft protocol that provided additional laws relating to non-international armed conflicts that eventually evolved into Geneva Protocol II. First, the Geneva Protocol II establishes itself as a supplement to “Article 3 common to the Geneva Convention of 1949 without modifying its existing conditions of application”. Second, the Geneva Protocol II defines the necessary armed conflict required to invoke its protections as “(any armed conflict) which takes place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol”.\textsuperscript{21}

\textsuperscript{17}Ibid. at 30.
\textsuperscript{19}Lysaght, supra note 22, at 12. The Articles do not provide a definitive codification of the laws of war for internal conflicts. Further, the provisions are general and incomplete, and thus, they cannot be viewed as an adequate guide to parties involved in a non-international armed conflict.
\textsuperscript{20}The question of non-international armed conflicts was addressed in Article 19 of the 1954 Hague Cultural Property Convention which provides for the application of the Convention to such conflicts.
\textsuperscript{21}Junod, supra note 105, at 39
Thus, in theory, the Geneva Protocol II clarifies and resolves many of the problems associated with determining the applicable laws of war in an internal conflict. A weakness, however, still exists in distinguishing between armed conflicts and internal disturbances at lower levels of violence. When determining the applicability of the Protocol, this weakness reopens the door to discretionary government abuse.\textsuperscript{22}

In terms of protections afforded in a non-international armed conflict, the Geneva Protocol II represents a significant advancement.\textsuperscript{23} The Protocol broadens the scope of humane treatment, particularly in regard to children and persons whose liberty has been restricted. In addition, by requiring an independent and impartial judicial hearing, the Protocol addresses the prosecution and punishment of criminal offenses related to the armed conflict.\textsuperscript{24}

The above constitutes a fairly extensive corpus of law, undoubtedly capable of offering civilians adequate protection were it to be applied. Further development or codification of the laws of internal armed conflict is not required so much as a wider acceptance and more effective implementation of the existing law. Traditionally, two options were thought to exist in this regard - either to persuade more states to accept humanitarian law in advance, or else to improve the methods of enforcement.

As regards the first method, there is already largely universal acceptance of the Geneva Conventions of 1949 (and thus of common Article 3). Those states typically affected by internal armed conflict are developing nations, but those same states, having obtained the inclusion of wars of national liberation in Additional Protocol I as international conflicts, have consistently avoided ratification of Protocol II.

Nevertheless, while there are still significantly fewer states party to Additional Protocol II than to the Geneva Conventions, there are almost the same number as states party to Additional Protocol I. Efforts at wider ratification of Protocol II could still be made, but acceptances of humanitarian law often amount to little more than lip service, and are of little importance unless the law is applied in practice. The answer must therefore, lie in more effective enforcement of the law.

\textsuperscript{22} Ibid. at 39. For example, the events in Tucuman Province in northwest Argentina in the mid-1970s were typical of an armed conflict, but in Buenos Aires which is 1000 miles away, they were generally considered an internal disturbances.

\textsuperscript{23} Lysaght, supra note 18, at 10. However, although it represented an advancement, the final draft of Protocol II was a significantly reduced version of the original draft that the International Committee of the Red Cross had presented at the Diplomatic Conference.

\textsuperscript{24} Protocol Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 1125 U.N.T.S. 609-99.
While the enforcement mechanisms of human rights are more developed than those of humanitarian law, several problems exist as regards their application in armed conflict. They are available only against states, so that breaches by insurgents can be addressed only through humanitarian law. In addition, much of the supervision machinery is optional, relying on the consent of the state concerned, and so making sanctions against the perpetrators a limited possibility.\(^\text{25}\)

Human rights mechanisms can nonetheless prove valuable in the protection of civilians during internal armed conflict, and even to enforce humanitarian law where it happens to coincide with international human rights obligations.\(^\text{26}\)

The effective enforcement of humanitarian law itself is vital, however. Ten years ago this did not seem to be a viable option – the international community was simply unwilling to take the necessary steps. States had shown little inclination towards accepting their obligation under common Article 1 of the Geneva Conventions to ensure that their provisions were applied by the other High Contracting Parties, and although collective measures were occasionally taken under the umbrella of the U.N. in the context of ensuring humanitarian relief,\(^\text{27}\) this tended to occur without addressing the question of enforcing humanitarian law and human rights. Any such steps had been virtually non-existent since Nuremberg. The creation by the U.N. Security Council of International Criminal Tribunals to deal with violations of international law committed in Rwanda and the former Yugoslavia has nevertheless demonstrated that enforcement action is possible, and the pronouncements of those Tribunals have had a great effect on the development of international law.

The actual administering of justice will, however, be rendered impossible unless and until the international community accepts its obligation to arrest those indicted and deliver them to the Tribunals. Despite the relatively widespread fears expressed during the formative stages of the International Criminal Tribunals,\(^\text{28}\) both have had a degree of success, and demonstrated that international justice is indeed possible. It can only be hoped that states will reflect this shift in attitude in a more

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\(^{25}\) This is perhaps particularly true of United Nations supervision. The European system would appear to be more effective.

\(^{26}\) Or, in some circumstances, even to enforce humanitarian law directly.

\(^{27}\) As taken in Somalia, Rwanda, Iraq and Bosnia-Herzegovina.

\(^{28}\) See, for example, the rather pessimistic views of Judge Richard Goldstone, then Chief Prosecutor, in Fisk, ‘Bosnia Judge Condemns West’, available at http://www.independent.co.uk/news/noheadline-1363640.html. (on Nov, 15, 2010).
concrete fashion, by actually taking the steps necessary to administer international justice, rather than providing mere lip service to the concept.

In this respect, the final decade of the 20th century may well represent a true turning point in international law. There remains a great need to develop norms governing internal armed conflicts and the political will to enforce such norms. A unified body of international law governing all armed conflict however, it is characterized, is essential to constrain actions in internal armed conflict. Such a body would help to ensure that military personnel operate under a single set of rules of acceptable behavior, increasing the likelihood that armed forces will act lawfully during armed conflict.

A unified body of law would set forth clear standards that are not susceptible to alteration depending on how the armed conflict is characterized. In addition to the development of conventional law, enforcement through *ad hoc* and permanent international tribunals and national courts will not only be necessary, but will also contribute to the corpus of the law.

As discussed, the ICRC has played perhaps the most significant role in the development of IHL in general and the law of internal armed conflicts in particular. It was given the mandate to work for the implementation of humanitarian law. It endeavors, through its contacts with all the parties, to obtain a maximum degree of respect of its rules. In fact the ICRC is still the main actor in protecting the human dignity of various types of conflict situations. One can thus understand what makes the nature of the ICRC's work so special. It is not embodied in any particular activity - be it operations on the ground, or the development of law - but rather in the way those two foci of the ICRC's work complement each other: operations that are backed by humanitarian law, while contributing to the development of that law.

Chapter five investigated the involvement of regional organization in internal conflicts. It has shown that, the question of the relationship of regional organizations and global organizations over the use or threat of force, arose with the establishment of global political organizations in the last century-first the League of Nations after World War I and later the U.N.O. at the close of World War II.

However, the involvement by regional organizations in internal conflicts has been developed more rapidly in the first decade after the Cold-War than in the first forty-five years of the U.N’s existence. Shortly after the end of the Cold-War we witnessed an increased involvement of regional organizations in the maintenance of
peace and security. According to Chapter VIII of the U.N. Charter, regional organizations are empowered to settle disputes among their member states using peaceful means, without any resort to the Security Council, while they are obliged not to take enforcement action without the authorization of the Security Council.

However, the inability of the Security Council in certain cases to act as the safeguard of peace and security has resulted in actions by a number of regional organizations. Such a practice not only challenges the traditional authority of the Security Council but it furthermore demonstrates a significant shift from a Security Council collective security to a decentralized collective security paradigm.

The Security Council increasingly looks to regional arrangements to address matters relating to international peace and security. Yet regional arrangements also have a history of acting without Security Council authorization. In the area of regional enforcement actions, two different legal systems govern. The Charter system requires that any regional enforcement action be authorized by the Security Council.

That system is endorsed by international actors and, in their *opinio juris*, sets forth the general rule for decision making. Under the operational system, however, international actors may tolerate deviations from the Charter system in order to satisfy broader legal and policy interests. Whether the international community will condone or condemn an unauthorized regional action thus depends, not only on the Charter system, but also on the nebulous operational system.²⁹

Despite its apparent simplicity, the principle that a state may validly consent to external military intervention turns out in practice to be fraught with difficulty. Once we move beyond the paradigm case of a recognized and effective government inviting intervention for sharply limited ends, it is extremely difficult to define precisely the cases in which invited interventions will be generally accepted. Previous state practice in this area is of only limited utility, since in most cases the reaction of states was strongly colored by Cold-War considerations.

Nonetheless, it may be possible to offer a few generalizations, none of which are likely to prove surprising. In keeping with the traditional approach to intervention in internal conflicts, most states are strongly influenced by the extent to which an inviting authority exercises control of the state at the time an invitation to intervene is issued.

Increasingly, however, states are prepared to consider the democratic legitimacy of an inviting authority as a counterbalance to considerations of power and effective control. Finally, in close cases, states are likely to defer to the judgment of regional organizations, at least in those cases in which the U.N. itself is reluctant to get involved.

Modern guarantee clauses are far from perfect. A regional organization with clear treaty provisions and a sound process to authorize the use of force may end up using force improperly, or, conversely, failing to intervene when it should. It also seems unlikely that guarantee clauses will provide a legal basis for intervening to stop all human rights abuses in light of the fact that the worst offenders may be unlikely to enter into agreements authorizing the use of force against them - although the AU’s Charter is a promising sign that states are willing, at least on paper, to commit to permitting intervention for humanitarian purposes. But such treaties are a step in the right direction and offer a way of balancing the need to protect human rights and provide collective security against the risks inherent in any system that permits the use of force. Achieving that balance in a way that subjects state action to rules is a central purpose of international law.30

When the U.N. and regional organizations cooperate effectively, this may narrow the chances of particular members of such organizations pursuing hegemonic motives. The activities of the U.N. and OSCE, arguably limited the extent to which Russia would have influenced events in Georgia between (1993-1994), had Russia been left all alone. This however does not mean that certain countries, by virtue of their position in the affected region or their influence within a regional organization will not manifest a tendency towards proactiveness.

The relationship that has developed between the U.N. and regional organization in the aftermath of the Cold-War is a reassuring one. In the future, the capacity of the U.N. and regional organizations to cooperate will undoubtedly expand as long as both sides continue to recognize areas of defects and improve on them. The future of collective security rests as much on the ability of regional organizations to effectively police their regions as on their ability to maintain good relations with the U.N.

The duty imposed on the Security Council under the Charter is to implement its responsibility for the maintenance of peace and security in a way that will make it attractive for regional organizations to continue to work with the U.N.

Nonetheless, the shortcomings of the current system are well-known. The text of Chapter VIII has become separated from state practice. Given the changes taking place in the world, the specter of divorce is not out of the question. However, for a reconciliation to occur, theory and practice will have to change somewhat, and state practice is notoriously stubborn.

As Chapter six discussed the concept of intervention on humanitarian grounds, it revealed that, intervention in support of human rights is grounded in the premise that it is the interests of humanity at large that are at stake, and not the interests of any particular state or group of states. From a legal perspective, the internationalization of human rights points to holding governments accountable for gross and systematic violations. Most governments that engage in violations of human rights tend to use state sovereignty and nonintervention as shields to protect them from scrutiny.

Traditional notions of sovereignty, however, are beginning to give way to a growing international awareness grounded in international law, and under Chapter VII of the U.N. Charter, that states cannot ignore the consequences of internal conflicts and the attendant human rights violations that displace entire societies.

State sovereignty means adherence to certain domestic practices, including protection of the human rights of citizens; thus the impediments that the concept has raised cannot, and should not, be used as a bar to international intervention in issues that are deemed international. Sovereignty has always been limited by human rights concerns. This is not something new. What we are witnessing in the post Cold-War era is an intensification and improvement of what has already been unfolding.

Recent experience suggests the growth of authoritative claims to act in vindication of human rights. While the character of the U.N’s role has sometimes been ambiguous, and has been subject to criticism, nevertheless the cases demonstrate an emerging international support for humanitarian interventions as legitimate activity. The cumulative effect of Security Council Resolutions relating to Iraq, Somalia, Rwanda, Haiti, and East Timor has been to establish the linkage between human rights violations and threats to, or breaches of international peace and security.

It is equally plausible to argue that even if such link is not invoked, humanitarian intervention is still permissible or justifiable. In spite of problems that have plagued the U.N, it has established protection forces to watch over the security of minority enclaves. It has also considered various means of securing the supply of
humanitarian assistance to populations in distress as a result of internal conflicts. These developments constitute notable precedents for future international practice.

Even though post Cold-War practice reveals the U.N. is prepared to implement a broader conception of humanitarian intervention, there is a realization at the same time that some of the problems encountered do not lend themselves to short-term solutions. As Weiss points out, “Security Council Resolutions have not always matched the means to well considered ends and objectives. Thus, a lack of commitment and resources has plagued some of the interventionary projects of this era. The result has been that U.N. humanitarian operations have suffered from operational and institutional shortcomings, and have not been translated into effective performance with any consistency, thus evoking mixed reactions”.31

The protection of human rights is, of course, of primordial importance, and this is increasingly reflected in international law. To state this does not, however, mean to embrace the use of any means to further this protection. As has been argued, even within liberal thought there are enough ambiguities to induce doubts as to whether the unilateral use of force is appropriate: state sovereignty is not so devoid of roots in justice as it might seem: international peace might be of even greater importance for the individual than the protection of human rights in all circumstances; and achieving peace will necessitate restrictions on the use of force and on institutions whose decisions, though objectionable in some cases, possess binding force.

Therefore, humanitarian intervention is not simply, as its proponents often claim, the moral alternative to an arbitrary, unjust, international legal order - one can also argue that the establishment of an institutional system to preserve peace and to delimit the rights of its subjects (even if still deficient) outweighs the need for a right to humanitarian intervention, even on moral grounds.

The post Cold-War international order is still unfolding with its uncertainties. With the relaxation of East-West tensions and the demise of repressive regimes in many parts of the world, expressions of domestic tensions and grievances have come to the fore. Given this state of affairs, it is likely that internal conflicts will increasingly challenge what one analyst characterizes as “the ingenuity and resourcefulness of the international community”.32 If this is the case, then as Sadako

Ogata remarks, “the time has come for a major dialogue on the hard choices that will have to be made in the face of finite humanitarian resources and almost infinite humanitarian demands”.\(^{33}\) Pressure on the U.N. to engage in more humanitarian operations if this scenario unfolds will mean the assignment of priorities in light of limited capabilities to intervene effectively. As Weiss suggests, it would seem to be the case for now that “confronted with increasing chaos and a seemingly endless number of humanitarian emergencies, the choices are better prevention, better intervention, or triage”.\(^{34}\)

If the U.N. is to become more effective in the future regarding humanitarian interventions, then it must learn from its mistakes and build on its successes. There is a need for establishing a comprehensive framework of general principles or statements to guide the U.N. in deciding when a domestic human rights situation or internal conflict warrants action by the Security Council, regional organization or a collectivity of states.\(^{35}\)

If future humanitarian interventions are to be successfully developed, then they must be collectively underwritten by the international community as a whole. Epistemic communities may play a key role in this regard. The opportunity for developing a general framework towards successful humanitarian interventions has presented itself. How to improve collective responses still constitutes unfinished business of the international community.

Chapter seven discussed another important issue, the self-defence exception to the general proscription on the use of force under Article 51 of the U.N. Charter. It is well known that under the U.N. Charter, states have an inherent right to self-defence in the face of an imminent threat of attack. Principles such as necessity, immediacy and proportionality are at the core of any debate on the scope and extent of self-defence.

Every term used in Article 51 of the Charter has come under microscopic attention and commentary at the hands of international jurists and legal scholars. In recent times, the failure of collective security system in dealing with the challenges in


\(^{34}\) Ibid. at 125.

an effective manner has particularly increased the significance of the self-defence exception.

The changing perceptions of expediency compel powerful states to creatively interpret the self-defence standards to suit their perceived national interests. Since the Charter's inception there have been numerous instances of armed intervention justified under the rubric of self-defence.\(^\text{36}\) They have been controversial due in large part to the expansive - often times tortured and unconvincing - definition of self-defence offered by the intervening state. Many legal scholars have been reluctant to countenance an expansive self-defence rationale because there is “a widespread perception that widening the scope of self-defence will erode the basic rule against unilateral recourse to force”.\(^\text{37}\)

The world now faces new threats and needs to rethink international mechanisms. 9/11 is perhaps the most pivotal point in recent memory with regard to international law. It changed the way states protect their borders, the way immigration flows in most Western countries, the way modern states conceive terrorism and counter-terrorism, and so forth. The importance of the response to 9/11 cannot be over-emphasized, as it marked a clear departure from prior practice in several areas of international law, state responsibility being central. Not only did the response to 9/11 considerably alter the application of *jus ad bellum*, it also initiated an important shift in the law of indirect state responsibility.

Irrespective of a doctrinal divide, armed action in self-defence is permitted only against armed attack. Within the ambit of existing international law, anticipatory self-defence is lawful to the extent that it conforms to the requisites of necessity, proportionality and immediacy, as outlined by Daniel Webster in the *Caroline Case*.

As the world is coming to grips with a changed security environment, it is clear that the dangers posed by private actors, in particular terrorist groups, are no longer isolated issues easily to be dealt with within the national context. In this era of globalization and technological innovation, states indeed have no choice but to join efforts and strive towards a ‘new security consensus’.\(^\text{38}\) On the other hand, as the memory of 9/11 is still very much alive, it is clear that law enforcement will not


always be a viable option, especially in the case of states providing support to private
groups carrying out attacks abroad. Therefore, a new security consensus must also
address the use of force by states in self-defence.

The new U.S. NSS articulates a doctrine of preemptive strike as the legal basis
for military action in anticipation against the transnational terror groups and other new
security threats to the states. While the conventional understanding of the right to self-
defence is such that it has to be exercises within the parameters of immediacy,
necessity, proportionality, the U.S., doctrine is conspicuously silent on these
requirements of legitimacy. If anything, it goes on to argue the case for broadening
the scope of the self-defence exception with graver implications for principles such as
non- intervention, territorial integrity, political independence and sovereign equality
of states.

To the extent that the intervention in Iraq in 2003 is regarded as an act of
preemptive self-defence, the aftermath of that intervention may presage an era where
states resist resorting to large-scale preemptive self-defence. The intervention in Iraq
highlighted considerable policy difficulties with the resort to preemptive self-defence:
an inability to attract allies; the dangers of faulty intelligence regarding a foreign
state's weapons programs and relations with terrorist groups; the political, economic
and human costs in pursuing wars of choice; and the resistance of a local populace or
radicalized factions to what is viewed as an unwarranted foreign invasion and
occupation.\(^{39}\) Preemptive self-defence may continue to be used by powerful states,
however, especially on a smaller scale, such as missile attacks against weapons
facilities or terrorist camps in ‘rogue’ states.

The war in Iraq serves as a reminder that even in this post Cold-War age of
unprecedented international cooperation, the U.N., and the Security Council
specifically, is capable of failure in its efforts to avoid breaches of the peace in our
global community. That does not mean that we should abandon the hope for success
that we have placed in such international organizations. On the contrary, the
international community of states should rely upon them even more heavily,
reforming them when necessary to meet new and emerging challenges. As the world
becomes a more dangerous place, nation states must learn to cooperate with each
other more fully. No one state, even the sole remaining superpower, can hope to
police all areas of the world at all times.

Much has changed since the U.N. Charter was first conceived more than 65 years ago. Tensions between countries have escalated, resulting in unimaginable violence and chaos throughout the world. As such, states have engaged in practices that are contrary to the Charter-causing damage to its authority as binding international law. Moreover, because the U.N. Charter lacks wording to address preemptive force, the Charter cannot control such state actions—even though it may be argued that in order to use any amount of force; a member state would need authorization from the Security Council. Despite this argument, the Charter is nevertheless silent on preemptive force, which leaves this murky area of international law subject to different, albeit controversial, interpretations.\(^{40}\)

However, the real challenge before the international legal community is to maintain the integrity and equal application of the legal system at the interstate level. Perhaps that would be the most effective way of responding to the challenge posed by the hegemonic powers and their expedient interpretation of legal standards.

In my view, states respect by and large the ban on the use of force. Violations certainly do occur, particularly when states are able to take advantage of the “system’s weakness”. Yet the fact that, states claim to have obeyed or to be willing to obey the rule. Even when this claim is blatantly untrue, constitutes proof of the rule’s validity.

States practice concerning foreign military intervention in internal conflicts is thus substantially in accordance with existing rules. The proliferation in a certain historical period of internationalized internal conflicts has no way challenged the system and yet, the present normative framework under the U.N. Charter is unable to find a satisfactory answer.

### 8.2. Findings of Research

1- The U.N. Charter’s policy of non-use of force in international relations, based on the principle of Article 2(4) that states must refrain from the threat or use of force against the territory and independence of other states, has been violated countless times since its inception in 1945.

2- While Articles 2(4) and 2(7) express strong limitations on state intervention and U.N. intervention respectively, an increasing number of legal authorities have raised serious challenges to these prohibitions in view of the alarming

rise in repression throughout the world and the ineffectiveness of enforcement mechanisms contemplated by the founders of the U.N.

3- When individual states intervene in internal conflicts, they seek to justify their involvement as necessary to protect a state from the effects of another state's prior, illegal intervention or rely on international human rights norms or democratic principles to justify their support for one faction or another in a particular conflict.

4- Looking at past practice, it is clear that the international community has been willing to note abuses of the right to invite intervention; as a result, such a right remains of continued utility in an international system that lacks effective multilateral security guarantees.

5- The validity of treaties authorizing forcible external intervention depends on whether, in a particular case, a state has validly consented to the treaty at issue and whether the state may later lawfully revoke that consent.

6- The end of the Cold-War has heightened the consensus on the importance of respect for human rights and democratic principles and loosened existing legal constraints on the use of such principles as a basis for intervention in internal conflicts.

7- International humanitarian law does not contain real implementation mechanisms for situations of non-international armed conflicts. An impartial humanitarian institution, such as the ICRC, can offer its services to the parties, but the parties have no formal obligation to accept them.

8- Violations of basic human rights in internal armed conflict may give rise to individual criminal responsibility under common Article 3, while being mindful of the necessary limitations entailed in such a ruling.

9- On many occasions, regional organizations have taken enforcement actions without Security Council’s authorization. Furthermore, these organizations have assumed the competence to determine the existence of threat to or breach of the peace, a power explicitly allocated to the Security Council under Article 39 of the U.N. Charter.

10- Chapter VIII was written prior to the formation of most of today’s regional organizations, and could not take into account the changes that both strengthened and weakened regional action.
11- The development of the law and practice of collective security by regional organizations after the Cold-War has been attended by many incidents. Such incidents include the adoption of treaties some provisions of which are either directly in conflict with some provisions of the U.N. Charter or challenge the very basis of some of those provisions.

12- Under current international law there is no right for states to undertake humanitarian intervention in another state without prior authorization from the U.N. Security Council. Humanitarian intervention without Security Council authorization is incompatible with Article 2(4) of the U.N. Charter which generally prohibits the use of force in international relations.

13- The configuration of the Security Council itself presents a formidable obstacle to effective U.N. action in cases that warrant humanitarian intervention. As long as the five permanent members retain veto power, political alliances will clash with humanitarian concerns and quash any attempt at applying the doctrine of humanitarian intervention broadly to all cases involving severe human rights abuse.

14- Article 51 is not well crafted to deal with modern national and international security threats. The framers of the U.N. Charter understandably could not have anticipated all future security threats. In its literal form, however, Article 51 and its interpretation set forth in *Nicaragua Case* impose overly strict limitations on the use of force.

15- Within the ambit of existing international law, the right of anticipatory self-defence is incompatible with Article 51 of the U.N. Charter, although it seems to be an accepted rule of international customary law, to the extent that it conforms to the requisites of necessity, proportionality and immediacy, which means that evidence, should be available.

16- The new U.S. policy on preemptive self-defence appears to be very problematic in international law, as it stipulates a withdrawal from the security architecture of the Charter. Furthermore, there is no *opinio juris* that the Bush Doctrine of preemption is a new right in international law, which every state can rely on. It is inconsistent with Article 51 of the Charter and international customary law on self-defence.

17- Self-defence against private actors, in particular terrorist groups in the absence of substantial state involvement, even with regard to failed states, would
seriously erode the prohibition on the use of force and the principle of non-intervention and would overly jeopardize international peace and security.

18- The right to self-defence is visibly enrolled in a process of change. Many of the strict requirements of *Nicaragua Case* in the definition of the notion of armed attack have either been overturned or have been opened to challenge. This gives Article 51 a different focus, namely the assessment of necessity and proportionality.

### 8.3. Testing of Hypothesis

According to above findings, the hypothesis of the current research stands partially established because according to contemporary international law there is no right for states to undertake armed intervention in another state without prior authorization from the U.N. Security Council. Further, any intervention without Security Council’s authorization will undermine the general prohibition on the use of force set forth in Article 2(4) of the U.N. Charter.

The current research points out that, the ban on the use of force laid down in Article 2(4), of the U.N. Charter is particularly rendered ineffective by emergence of internationalized internal conflicts, where states recover the freedom from action previously surrendered in subscribing to the great ban, because of the inability of the Security Council to cope with them due to the veto power by its permanent members, which leaves the council hardly capable ‘politically and military’ of meeting the challenges posed by the new situation.

It has been witnessed in the current research that, the internationalization of internal conflicts introduces other exceptions to the ban, alongside self-defence, in particular, when states stretch the meaning of self-defence to justify their forceful action and are trying to take the place of the Security Council when their intervention is an action aimed at restoring peace and international security rather than self-defence.

The current research points out that, in post Cold-War area, internal conflicts had become crucial to the problem of safeguarding international peace and security insofar as they result in many of the problems that dominate contemporary international law, including refugee flows, terrorism, gross human rights violations, and famine. Therefore in the absence of an effective centralized authority, rules should not come too elaborate, nor must they leave too much discretion. They must be as simple as possible. In electing the ban on the use force, states have ostensibly put
the preservation of international peace on a higher level than other values and they behave accordingly, despite short-term of injustices.

According to above findings, international law governing foreign armed intervention in internal conflicts has remained remarkably constant over time. The principle of non-intervention remains the norm. If anything, that principle is even stronger now in its application to unilateral intervention than it was ten years ago.

However, there is still lacuna in the existing laws, and the present normative system under the U.N. Charter is unable to find a satisfactory answer. Therefore, the current research points out that, because the Security Council operates on the basis of established legal norms and participatory processes, its decisions - including its decisions to use force - will continue to carry far greater legitimacy than unilateral exercises of force.

8.4. Suggestions

1- Member states must discuss changing the U.N. Charter to keep pace with the geopolitical changes that have taken place since 1945 when the U.N.O. was formed. The Charter should be updated to address internal conflicts and to provide a mechanism by which the U.N.O. can authorize action to prevent and end internal conflicts.

2- The U.N.O. should continue to assume its traditional role of remaining a neutral party in internal conflicts. While this role has permitted the Organization to assume multiple and varied functions to assist peoples in resolving their differences and deciding upon political solutions, it has meant not making that decision for them.

3- I suggest establishment of armed forces would be available on a permanent rather than on the current *ad hoc*, basis, as a means of deterring ‘breaches’ of the peace. Potential aggressors would know that the Security Council had at its disposal a means of response, making the force a deterrent.

4- The Security Council should stand ready to use the authority it has under the Rome Statute to refer cases of suspected genocide, war crimes and crimes against humanity to the ICC.

5- There must be comprehensive reforms within the U.N. Security Council to give room for more permanent members with Veto power. However, adjusting the composition of the Security Council to better reflect the world order would prove beneficial to the U.N.
6- I suggest for establishing a permanent monitoring system within the U.N and the ICRC of for documenting the practices of state and non-state actors in conflicts of a non-international character. Such monitoring bodies should be published and disseminated.

7- There is an urgent need for a much fuller and more reflective international study and debate on the whole question of implementation the law of non international armed conflicts. Such a process should involve representatives of states, alliances and armed forces, as well as of the U.N.O., the ICRC and other interested bodies.

8- The second Protocol of 1977 goes beyond the provisions of Article 3 in protecting the victims of internal conflicts. However, I believe, that because basic respect of humanitarian law is a question of political will on the part of the parties to the conflict, Protocol II can be employed as an efficient instrument of humanitarian policy.

9- The U.N.O. must define, in consultation with the regional body, the lines of authority between the U.N.O. and regional peacekeepers. Status of forces agreements governing the interaction of the various peacekeeping and local law enforcement bodies must be a part of the operation prior to intervention. The ultimate decision-making power must be retained by the U.N.O.

10- Regional organizations should increase the number of countries involved militarily. Not only does it spread the cost and burden of intervention, but also the mere fact that a multitude of countries has consented to the action increases the legitimacy of the intervention as objectively reasonable.

11- A new Chapter VIII could be changed with the goals of increasing the flow of information between the regional and global organizations, allowing not only an increased flexibility for regional organizations to undertake enforcement actions, but also allowing greater U.N. regulation of regional organization policies - be they traditional enforcement actions or not - that reach a certain level of lethality.

12- A majority of the problems with legal justification for humanitarian intervention would be alleviated by the formation of an objective U.N. Committee which could assess situations for human rights violations and recommend action by the Security Council if possible or regional organizations if not. Thus, the fundamental prohibition of illegal force could be maintained by the U.N. while still accounting for the need for protection of human rights.
13-This study suggests the necessity of establishing a comprehensive framework of general principles or statements to guide the U.N. in deciding when a domestic human rights situation or internal conflict warrants action by the Security Council, regional organization or a collectivity of states. If future humanitarian interventions are to be successfully developed, then they must be collectively underwritten by the international community as a whole.

14- Since the use of force in international relations must always be treated as an exceptional measure and is an extremely grave matter under any circumstances, every effort must be made to exhaust all possible peaceful means of resolving humanitarian crises. Primacy must, therefore be given to preventive measures, including the greater use and development of early warning systems and preventive diplomacy, deployment and disarmament.

15- In order to give rise to intervention involving the threat or use of force, the violations must be massive and systematic, as defined in the relevant international instruments or by the jurisprudence of the international criminal tribunals for the former Yugoslavia and Rwanda. The threat posed to civilian life must be overwhelming and immediate, thus allowing no alternative action.

16- Article 51 needs to be re-written, or its terms specifically defined so as to allow for the use of self-defence in response to terrorism. Specifically, outdated notions of the term “armed attack” need to be replaced with a definition which fits reality. Both the international community and the U.N. need to be adopted a stance against terrorism beginning with officially recognizing the legitimacy of the use of self-defence against terrorist attacks.

17- The threat of terrorism surely is a huge challenge to the existing international security system. In my opinion, a solution can only be achieved, when there is international agreement and authorization of actions to be taken. Unilateral actions of an arrogant superpower only strengthen support for terrorists.

18- I would like to summary my suggestions by pointing out the following proposals for Increasing U.N. Effectiveness: Update the Charter, Focus on Prevention and Action;

The first step toward effectively applying international law to internal conflicts is to change international law, via an amendment to the U.N. Charter, to expressly address internal conflicts. Amending the Charter to address the growing problem of internal conflict would force member states to discuss intervention and to define the
international community's role. Member state’s agreement on a solution would increase the likelihood of compliance with the proposed amendment. Member state’s compliance would, in turn, increase the likelihood of timely action in situations like Rwanda, and would increase the probability of member state’s willingness to commit to U.N.O-authorized action.

Prevention, rather than “sending in the fire brigade”, is the optimal solution to the growing problem of internal conflicts. Preventing internal conflicts would increase the stability of international peace and security. In addition, successful prevention would reduce human suffering, decrease the need for military intervention, and lower the costs associated with relief efforts. These benefits directly serve the U.N.O. purposes, and carefully constructed provisions would comport with its principles.

Key aspects of preventing internal conflicts include allocating resources and diffusing ethnic and political tensions. Another important aspect of prevention is peaceful dispute resolution. The Charter only requires parties in an international dispute to seek alternative dispute resolution. The Charter should have a similar provision for parties in an internal conflict. The U.N. should establish a means by which a nation's affairs could be overseen by two or more U.N. member states. The overseers' responsibilities should include mediating between warring factions within the “subject” nation and not include assuming responsibility for any part of the subject nation’s government unless absolutely necessary.

When preventative measures fail to avert an internal conflict, the international community must act. Because of the speed with which events can happen, procedures must be established so that when a crisis arises, the international community will be poised for quick action. First, the U.N. Charter should define the general categories of internal conflict. Second, the Charter must provide guidance as to what turns an internal dispute into an international one, thus permitting U.N. intervention. Lastly, the Charter should define what type and extent of intervention is legal. Clarity in international law pertaining to internal conflicts will help deter parties from starting domestic disputes, and when a dispute does erupt, the international community will react quickly to end the conflict.